

### **REMARKS**

This Application has been carefully reviewed in light of the Office Action mailed April 28, 2009. At the time of the Office Action, Claims 15-28 were pending in this Application. Claims 15-28 were rejected. Claims 1-14 were previously cancelled without prejudice or disclaimer. Claims 22, 23, and 28 are herein amended. Applicants respectfully request reconsideration and favorable action in this case.

#### **Rejections under 35 U.S.C. § 112**

Claims 22-23 were rejected by the Examiner under 35 U.S.C. §112, second paragraph. According to the Examiner:

Regarding claims 22-23, "...reduced at the beginning of the synchronization channel" and "...increased at the beginning of the synchronization channel" is unclear. The examiner interprets it as "...reduced at the beginning of the transmission of the synchronization channel" and "...increased at the beginning of the transmission of the synchronization channel".

The Examiner's interpretation is correct. Thus, as shown above, Applicants have amended Claim 22 to match the Examiner's interpretation. In addition, the limitations of Claim 23, which have been added to independent Claims 15, 27, and 28, have been amended in each instance to match the Examiner's interpretation.

#### **Allowable Subject Matter**

Applicants appreciate Examiner's consideration and indication that Claim 23 would be allowable if written to overcome the rejections under 35 U.S.C. §112, second paragraph, and to include all of the limitations of the base claim and any intervening claims. However, Applicants believe that the independent claims are allowable as currently written, and will therefore wait for reconsideration of the remaining claims before taking action regarding allowable Claim 23.

**Rejections under 35 U.S.C. § 103**

Claims 15-18, 22, 24, 27-28 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Publication No. 2004/0028013 by Michael Philip Fitton, et al. ("*Fitton*") in view of U.S. Patent No. 6,804,214 issued to Peter Lundh, et al. ("*Lundh*").

Claims 19-21, 25, and 26 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Fitton* in view of *Lundh* and U.S. Patent Publication No. 2005/0159118 by Xin Jin, et al. ("*Xin*").

Applicant respectfully traverses and submits the cited art combinations, even if proper, which Applicant does not concede, do not render the claimed embodiment of the invention obvious.

In order to establish a prima facie case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Even if each limitation is disclosed in a combination of references, however, a claim composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *KSR Int'l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). Rather, the Examiner must identify an apparent reason to combine the known elements in the fashion claimed. *Id.* "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.*, citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Finally, the reason must be free of the distortion caused by hindsight bias and may not rely on ex post reasoning. *KSR*, 127 S.Ct. at 1742. In addition, evidence that such a combination was uniquely challenging or difficult tends to show that a claim was not obvious. *Leapfrog Enterprises, Inc. v. Fisher-Price, Inc. and Mattel, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007), citing *KSR*, 127 S.Ct. at 1741.

Applicants submit that the cited references -- *Fitton*, *Lundh*, and *Xin* -- teach every element of Applicants' independent claims. For example, regarding claim 1, the cited references fail to teach "wherein the primary common control physical channel and the

synchronization channel are transmitted time multiplexed; and wherein a transmit power of the dedicated channels is reduced during the transmission of the synchronization channel."

The Examiner argues that "Fitton et al. fails to teach wherein the transmit power of dedicated channels is reduced during the transmission of the synchronization channel. The preceding limitation is taught in Lundh (see col. 5, lines 32-33)." (Office Action, page 3). However, *Lundh* in fact does not teach this limitation. *Lundh* teaches:

Since the non-power controlled common channels 320 typically require a high downlink transmitted power per carrier, the problem with allocating non-power controlled common channels 320 [*the Synchronization Broadcast Channel is a non-power controlled common channel, per col. 5, lines 1-3*] and dedicated channels 300 to the same carrier is that the transmit power allocated to the non-power controlled common channels 320 will force the downlink transmit power allocation of dedicated channels 300 to significantly higher power levels, due to downlink interference. Therefore, when there are two or more carriers (Primary 250 and Secondary 260) allocated to a cell 210 covering the same area, by removing all of the non-power controlled downlink common channels 320 from one of the carriers (Secondary carrier 260), the total downlink transmitted power on the dedicated channels 300 is reduced. In addition, by including the dedicated channels 300 on only the Secondary carrier 260 with optionally the power controlled downlink common channels 310, the total transmit output power within the cell 210 as a whole is reduced. Also, by optionally dividing the power controlled 310 and non-power controlled common channels 320 into two separate carriers 260 and 250, respectively, an example of which is shown in FIG. 3, the downlink interference is generally reduced in a cell 210, which is essential for CDMA capacity.

(*Lundh*, col. 5, lines 19-42) (emphasis added).

This passage explains that allocating non-power controlled common channels, such as a synchronization channel, and dedicated channels on the same carrier is problematic because the transmit power of the dedicated channels must be increased during transmission of the non-power controlled downlink common channels (e.g., synchronization channel) in order to overcome downlink interference caused by the transmission of the non-power controlled downlink common channels. The passage then teaches that this problem of having to increase the transmit power of the dedicated channels can be addressed by assigning the non-power controlled downlink common channels and the dedicated channels to separate carriers.

By separating the non-power controlled downlink common channels (e.g., synchronization channel) from the dedicated channels, the total transmit power of the dedicated channels can be reduced as compared to the situation in which the non-power controlled downlink common channels (e.g., synchronization channel) and the dedicated channels share the same carrier. This is fundamentally different than reducing the transmit power of the dedicated channels during the transmission of the synchronization channel, as compared to when the synchronization channel is not being transmitted, according to Applicants' invention. Thus, *Lundh* does not teach that the transmit power of the dedicated channels is reduced during the transmission of the synchronization channel.

For at least the reasons presented above, the cited references do not teach, disclose or suggest each and every element of amended Claim 1. Thus, Applicant respectfully requests reconsideration and allowance of amended Claim 1, as well as all claims that depend from Claim 1. In addition, for analogous reasons, Applicant respectfully requests reconsideration and allowance of amended independent Claims 27 and 28.

### CONCLUSION

Applicants have made an earnest effort to place this case in condition for allowance in light of the remarks set forth above. Applicants respectfully request reconsideration of the pending claims.

Applicants respectfully submit a Petition for One-Month Extension of Time. The Commissioner is authorized to charge the fee of \$130.00 required to Deposit Account 50-4871 in order to effectuate this filing.

Applicants believe there are no other fees due at this time. However, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-4871 of King & Spalding L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.457.2030.

Respectfully submitted,  
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